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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,186	07/21/2003	Thomas Martin Buckingham	NOES-0001-1	4727
22506	7590	02/22/2007		
JAGTIANI + GUTTAG 10363-A DEMOCRACY LANE FAIRFAX, VA 22030			EXAMINER FLETCHER III, WILLIAM P	
			ART UNIT	PAPER NUMBER
			1762	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
30 DAYS	02/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

10/623,186

Applicant(s)

BUCKINGHAM ET AL.

Examiner

William P. Fletcher III

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 02 February 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: See Continuation Sheet.
- ☒ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
See Continuation Sheet

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

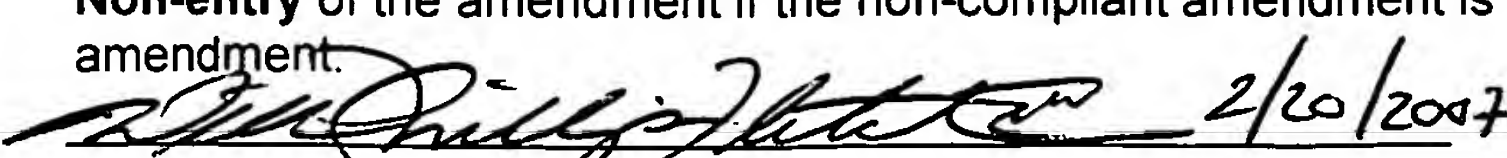
1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month, or thirty (30) days**, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

 2/20/2007  
Legal Instruments Examiner (LIE), if applicable

(571) 272-1419

Telephone No.

Continuation of 4(e) Other: The amendment incorrectly identifies the status of Claim 41. Claim 41 is currently withdrawn from consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed 18 July 2006.

Continuation of 5 Other: It is the Examiner's position that the newly-added limitation "an extinction time of greater than or equal to 5.5 hours," is not fully supported by the specification as originally-filed. Applicant's specification discloses that luminescence is visible through the 5.5 hour test period and "readily visible" thereafter. It is presumed, however, that the paint does, in fact, have an extinction time and, consequently, Applicant does not have support for the any and all extinction times encompassed by the "greater than" portion of the range. Further, this lack of an upper limit is indefinite. The specification provides data only up to 320 minutes (5.3h) and it is unclear what maximum extinction time defines the invention and, by extension, which paints would and would not infringe the claim. The primary purpose of 35 USC 112, 2nd Paragraph is to ensure that the scope of the claims is clear so that the public is informed of the boundaries of what constitutes infringement of the patent. Because the phrase "an extinction time of greater than or equal to 5.5 hours" is such that one of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement, rejection under 35 USC 112, 2nd Paragraph would be appropriate were the amendment entered.